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BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

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WASHINGTON, DC 20268-0001

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

INITIAL BRIEF OF THE  
ALLIANCE OF INDEPENDENT STORE OWNERS AND PROFESSIONALS

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## **INTRODUCTION**

The Alliance of Independent Store Owners and Professionals (AISOP) is a nonprofit trade association of more than 3,500 small business retailers, service providers, self employed individuals, and professionals that rely on saturation mail advertising to reach their local customers. AISOP's members also include approximately 275 businesses that are saturation mail and advertising service providers, like shared mailers, shoppers, coupon envelope mailers, printers, and advertising agencies that provide marketing and advertising services to small businesses. AISOP has participated individually, or through small business associations, in each general rate case since 1984.

AISOP sponsored two witnesses in this case. Rich Smith, the owner of Buttercup Dairy, a neighborhood full service grocery store in Terryville, Long Island, who described how his half page ad sent by mail each week in two different shopper publications, helped his business compete against large, multi-location grocery stores and how his ad was read and used by consumers in an informational way. Orlando Baro, the Director of Sales for The Flyer in Miami, described how his mailed shopper drew 75% of its customers from neighborhood "mom and pop" businesses. Baro described how shoppers, like other saturation shared mailers, work best when they serve a mix of small to large customers. Baro explained the price sensitivity of saturation mail by showing how small customers respond to postal rate increases by maintaining the same level of spending and reducing the size or frequency of their ad. Large customers have other media choices and are likely to switch to other media. Baro explained how saturation mailers were at a disadvantage in competing based on price with other distribution media like newspapers.

### **AISOP'S POSITION IN THIS CASE**

AISOP's position in this case is as follows:

1. AISOP asks that the Commission recommend rates for Standard A ECR saturation mail that are no higher than the rates proposed by the United States Postal

Service. AISOP has joined in supporting testimony by a Consortium of other mailers that asserts that the contingency requirement sought by the Postal Service is too high and should be reduced. If the Commission reduces the revenue sought by the USPS, AISOP would urge that some of the savings be applied to a reduction in the proposed rates for Standard A ECR letter mail that would receive an increase of 10% or more under the USPS proposal.

2. AISOP supports a reduction in the pound rate for ECR saturation mail.

As a corollary to the above position AISOP opposes the requests made by the Newspaper Association of America (NAA) and the Association of Alternate Postal Systems (AAPS) described below:

- NAA has asked the Commission to single out ECR mail from other Standard A mail for an even greater increase in cost coverage and ultimate postal rates to fund a reduction of “the burden on first class mailers” [Trial Brief of the Newspaper Association of America at page 9.]
- NAA is asking the Commission to recognize newspapers as a special class of competitors against saturation mailers and to set higher rates for ECR mail that enable newspapers “to maintain the profit margins that the markets demand [newspapers] maintain.” [TR19151 line 5-6.]
- AAPS has asked the Commission to reject the USPS proposals for ECR saturation mail because they are part of an ongoing effort by the USPS to divert ECR mail from private enterprise competitors and that “the Postal Service has once again considered its competitors for saturation advertising only as prey” [AAPS-T-1 at 6.] AAPS bases this request on its unsubstantiated claim that the USPS ECR saturation mail proposals would “damage alternate delivery’s ability to compete . . . with prices that could allow shared mail packages to arbitrarily price below our costs, forcing alternate delivery companies out of business.” [AAPS-T-1 at 5.]

#### **AFFORDABLE SATURATION MAIL RATES HELP SMALL BUSINESS ADVERTISERS**

Saturation mailers, like free papers, shoppers, shared mailers and coupon envelope mailers, primarily serve the small business retailer, service provider, professional, home based business and consumer. The typical shopper, draws 70% to 95% of its customer base from individuals or small

businesses. Saturation mailers succeed by offering small business customers “turn key” marketing and advertising solutions. Saturation mailers help advertisers “define their existing and potential customer base, design an offer that will draw those customers, create and print the ad.” [AISOP-T-2 at 4.] To help small business advertisers achieve the lowest distribution cost possible, saturation mailers “partner with the Postal Service in operations, preparation, and drop shipment of the mail so that [they and their customers] can earn the lowest possible postal rates.” [AISOP-T-2 at 4.]

Affordable postal rates for saturation mail are vital to small business because saturation mailers offer them cost-effective, geographically targeted advertising that other print media cannot or will not. The contrast between the targeted advertising services offered by mailed shoppers, like the Miami Flyer, and a major daily newspaper was provided on the record by NAA Witness Wilson and AISOP Witness Baro.

In the Miami city area, The Flyer offers small businesses 58 geographically targeted zones of approximately 12,000 homes each. A single store owner, like a dry cleaner, that wants to just reach customers near his store can buy a full page, single zone ad in The Flyer for \$312.00. [NAA/AISOP-T2-11.]

The same advertiser trying to buy a zoned ad in the “small business,” Neighbors program offered by the Miami Herald would encounter the following:

- The Miami Herald offers only 7 zones in the Miami Dade County area compared to The Flyers’ 58. [TR19193.] In Broward County, where The Flyer and the Miami Herald also compete, The Flyer offers 39 zones and the Miami Herald offers 3 [TR192061; AISOP-LR-1 and 2.]
- The Miami Herald offers its Neighbors program on 2 days of the week, Thursday and Sunday. The average occupied household subscriber coverage of the Miami Herald on weekdays is 21% meaning approximately 1 out of every 5 occupied households subscribe to the paper. On Sunday, the occupied subscriber coverage is higher, at 27%, meaning that roughly 1 out of every 4 households get the paper. [TR19185 and 19186.]

- A small business wanting to buy a single zone ad in the Thursday zoned program would pay \$1,220.05 for an ad that would go to approximately 53,325 households in an area with more than 260,000 occupied homes. In other words, the small business would pay 4 times more than it would pay in The Flyer to reach 1 out of 5 homes in its trade area. If the small business wanted to reach more occupied households, it could buy an ad in the Sunday Neighborhood edition but would pay \$1,485.25 for a full page ad. [TR19192.]

The information received into evidence as the Miami Herald retail rate card [AISOP/NAA-RT-1-XE1] shows that daily newspapers, like the Miami Herald, cater more to the needs of large advertisers than those of small business.<sup>1</sup> The saturation mailers that appeared before the Commission all give their advertising customers an opportunity to have preprinted insert advertising distributed in their products to geographically targeted zones with minimum purchase quantities averaging 12,000 or less. [NAA/AISOP-T2-9; SMC-T-1 at 4; SMC-T-2 at 4; SMC-RT-1 at 8; TR18917.] At the Miami Herald, a preprint advertiser that wants to take advantage of the higher subscriber coverage of the paper on Sunday must be prepared to commit to a minimum distribution of 100,000. [TR19196.] Although NAA Witness Wilson testified that the paper's TMC program allowed advertisers to purchase in smaller quantities of 10,000 [TR19196], this assertion is contradicted by the quantity requirements stated in the Miami Herald retail rate card which states minimum quantities of 20,000 or higher.<sup>2</sup> [AISOP/NAA-RT-1-XE1; TR19210.]

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<sup>1</sup>The inability or unwillingness of newspapers to offer cost-effective, geographically targeted services to small businesses is also the subject of Witness Smith's answer to an NAA interrogatory. He states, "Several years ago, the daily newspaper that serves our community, *Newsday*, had a deal where they tried a local section of the paper that was offered to local businesses on a zoned basis. My store tried it. The paper would do a special edition with a local section of approximately 10-12 pages that went to approximately 50,000 homes, once a week. It did not work well for our store and I believe it did not work well for *Newsday* as I understand the program was discontinued. [NAA/AISOP-T1-6.]

<sup>2</sup>In cross-examination, Witness Wilson was asked if the Miami Herald retail rate card contained the blended or saturation rates for the Herald Values TMC program. He answered, "It does not. As a matter of fact, I didn't know that you were bringing these rates out, or I would have told you that when you get into the saturation area, then we have things we call Herald Card, for example . . . That an advertiser can use where they can saturate their market, either as low as 1 zip code or for the full market" [TR19194.] Wilson subsequently testified that the minimum quantity

The evidence of Witnesses Baro, Smith, Buckel, Merriman, Bradpiece and Giuliano shows that small businesses are more dependent on saturation mail as an advertising medium than medium to large businesses. Behind every saturation mail program, there are thousands of neighborhood retail and service businesses, individual professionals, sole proprietorships and tradespeople that depend on affordable saturation mail to keep them in touch with customers. For many of these advertisers, their "gross sales" are the same as wages. Their jobs and livelihoods depend on the targeted, coupon envelope, shopper ad, or shared mail insert to stay in business.

### **SATURATION MAIL IS VERY PRICE SENSITIVE**

One of the reasons saturation mail is very price sensitive is its dependence on small business customers. Because small businesses are already paying more (when measured as a percentage of advertising costs to gross revenues or sales) to reach their customers than their big business competitors, they often cannot or will not accept price increases. Witness Smith explains this in his testimony. "We spend more and get less. As a percentage of our gross operating profits we are spending a little more than one percent a year on our advertising and promotion budget. For that expense, we get a half page ad, with two colors, in the mailed shoppers that are distributed to customers in our trade areas . . . [My competitors] are paying one percent or less for their advertising . . . and can do a 6 to 8 page ad that is inserted in the local paper or delivered to homes through a newspaper delivery program, and buy extensive TV and radio spots." [AISOP-T-1 at 4.] Witness Baro explains what happens when mailers are forced to pass on higher costs to customers. "Our small business customers simply refuse to pay the higher prices. They do not have the money . . .

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threshold for Herald Values was 10,000. [TR19196.] AISOP counsel attempted to do a follow up question on this volunteered information but NAA counsel objected and the objection was sustained. Wilson's statement is contrary to the information in the Herald retail rate card which states, "Herald Card inserts in the Miami Herald, El Nuevo Herald and Herald Values are a cost-effective way to target your prospects. Herald Card will print, insert and deliver in any of the zones offered . . . A minimum order is 20,000." [TR19210.]

The majority of our small business advertisers responded by telling their sales rep to ‘reduce the size of my ad’. Their advertising budgets stayed the same in spite of our price increases.” [AISOP-T-2; see also SMC-T-1 at 9.]

The inability of small advertisers to pay more for advertising is only one of the reasons that ECR saturation mail is so price sensitive. Most shared mail programs depend on a synergy of business from small stores and individuals combined with advertising from medium to large stores. Postal rate increases can drive national and regional businesses out of shared mail programs. Baro explains how medium to large size advertisers have more media choices when postal rates go up and how the shoppers’ competitors take advantage of postal rate increases to pick off the shoppers’ larger customers. [AISOP-T-2 at 7; NAA/AISOP-T2-13.]

When postal rates increase, non-postal competitors approach the big business advertisers in shared mail programs and offer better deals, price cuts and deeper discounts. Because these competitors do not have the high fixed costs of postage, every postal rate increase presents a market opportunity to aggressively go after the largest participants in a shared mail program. This creates a “Catch 22” for the shared mail provider. It cannot pass on rate increases to larger customers, without fear of losing this business to non-postal competitors. If a large advertiser leaves the shared mail program, the costs formally covered by this advertiser must be picked up by the other advertisers remaining in the program. Mailers are left with the choice of trying to recoup increases in their costs from their small business advertisers, whose business is not aggressively courted by non-postal competitors, or absorbing the cost increases. [TR18917; AISOP-T-2 at 7; AISOP-T-1 at 4.]



## **CONSUMERS LIKE AND VALUE SATURATION MAIL**

Saturation mail is important to America's consumers and particularly valuable in rural communities. The record is un rebutted that consumers like, read and value saturation mail. The record shows:

1. Consumers use free mail advertising to plan their shopping. There is no subscription cost to get this information. It benefits low income households, single parents, and seniors that cannot afford subscription media. [AISOP-T-1 at 5; AISOP-T-2 at 8.]
2. Because saturation mail primarily serves local business, it allows consumers to patronize locally owned businesses and neighborhood stores. It reflects the diversity of the community. [AISOP-T-2 at 8.]
3. Saturation mail programs are vital to rural communities where transportation costs, and low density, make consumers and readers depend on the information provided by saturation mail programs. As ably demonstrated in the testimony and interrogatory answers of Witness Merriman, the advertisers and consumers in many rural communities look to a mailed shopper as the "buy and sell bible" for their farm and ranch businesses as well as a source of shopping information. [SMC-T-2 at 4.]
4. Individuals and consumers are both readers and advertisers in mailed free papers. The classified ad costs of a mailed free shopper are substantially below the comparable rates in a daily newspaper. [SMC-T-2 at 4.] Many free papers, like the Miami Flyer, allow readers to run non-commercial ads for free. [AISOP-T-2 at 9.]
5. Consumers and businesses look to mailed coupon advertising and free papers as the best source for information on home repair and improvement services.

## **A REDUCTION IN THE POUND RATE WILL HELP MAILERS, ADVERTISERS, CONSUMERS, AND THE USPS**

Witnesses Baro, Buckel, Merriman, Bradpiece and Giuliano all explain how the present pound rate acts as a disincentive for saturation mailers to sell more, or heavier pieces, into shared mail programs or shoppers. These witnesses have identified several market problems, and disadvantages for mailers, small and large business advertisers, consumers, and the USPS with the high pound rate. There is wide support from other parties and witnesses for the USPS pound rate proposal. The record shows the Commission should approve the USPS ECR pound rate proposal for the following reasons:

1. As shared mail programs, like shoppers, become less competitive for the business of medium to large advertisers, more costs must be passed on to the small business advertiser. The mailed advertising product of these mailers, in turn, provides less information to consumers. Witnesses Baro, Buckel, Bradpiece and Giuliano all give examples of how postal rates and the pound rate cause advertisers to switch from mailed free papers to other media. [AISOP-T-2 at 7 and 8; SMC-T-1 at 10-12.]

2. If NAA Witness Wilson is to be believed about the prices he testifies are commonly charged by the Miami Herald,<sup>3</sup> then NAA's own evidence shows that the Miami Herald's

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<sup>3</sup>Presumably, Witness Wilson has actual knowledge, or access to actual knowledge, of the prices charged by the Miami Herald. He testified he has never had direct responsibility for handling customers. [TR19183.] Although Wilson purported to give direct testimony that compared the Miami Herald rates to that of its rivals [TR19158], on cross-examination Wilson could not address specific questions about prices and deals allegedly offered in recent months to large customers of the Miami Flyer. He testified that it had been "4 months since I have been involved in sales and marketing" and he could not answer specific questions about recent pricing proposals made by the Miami Herald paper. [TR191237.] SMC Witness Giuliano advised the Commission that Giuliano had investigated certain statements made by Witness Wilson about pricing by ADVO in the Miami market, as well as statements about ADVO's Philadelphia private delivery operation, and that Giuliano was prepared to offer direct testimony on this subject. SMC invited any interested party to cross examine Giuliano about ADVO's pricing practices in the Miami market but this invitation was not accepted. [TR19006 and 19007.] Wilson's lack of recent knowledge, NAA's and AAPS's

prices are below the postal costs alone that a mailer would pay for mailing at the pound rate.<sup>4</sup> NAA's own witness substantiates the position taken by AISOP and SMC. The Miami Herald, with its blended TMC rates, is able to offer, and does offer, large advertisers rates that are below the stand alone postage costs a mailed shopper must pay for pieces weighing above the breakpoint. For free papers like The Flyer, that has 60% of its total distribution at or above the breakpoint, (and 75% to 80% of some weekly editions [NAA/AISOP-T2-5]), the current high pound rate makes it unable to compete with the rates that can be offered by newspaper TMCs that blend the lower cost of their subscriber circulation with the higher cost of mailed or privately delivered distribution to non-subscribers.

3. A modest reduction in the ECR pound rate will help the USPS address the costing and marketplace ironies of the existing rate design. As pointed out by Witnesses Buckel and Giuliano [SMC-T-1 at 12; TR19003-19005], the current high pound rate has the perverse result of turning some of the Postal Service's best customers into competitors. As free papers or shared mailers become more successful and have heavier pieces, they are tempted to switch all or part of their distribution to private carrier. [SMC-T-2 at 7; SMC-T-1 at 12; TR18919-18921.] The record shows that this has been done, or is under consideration, by free papers and that even ADVO, the nation's largest advertising mailer, has reduced its shared mail volumes by 4% and is now delivering 107 cooperative advertising mail packages a year by private carrier. These privately delivered

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unwillingness to inquire from a witness with firsthand knowledge of ADVO's pricing in the Miami market, and the cross-examination answers of Wilson, raise substantial questions about Wilson's reliability and accuracy as a source for pricing information on the rates the Herald's rivals are offering to large advertisers.

<sup>4</sup>Witness Wilson testified that the Miami Herald will offer an advertiser with a 12 page tabloid insert, wanting to do full market saturation coverage on a weekly basis, a rate of 3 cents per household [TR19159.] On cross-examination Wilson acknowledged that the average weight for a piece this size was 1.1 ounces and that the pound rate postage, at current saturation postal rates for delivery at the DDU, would be 3.85 cents a piece for such a tabloid. [TR19242 and 19243.]

packages are heavier on average, and are more profitable, than ADVO's average shared mail packages. As Giuliano points out, this switch can have a great impact on the Postal Service and its monopoly customers:

The impact of this diversion on the Postal Service is greater than the volumes alone imply, because our private delivery operations tends to be concentrated in the lowest cost, easiest to deliver areas of these markets. In higher cost delivery areas within these markets, such as outlying areas with longer distances between deliveries, ADVO continues to use the mail . . . The volumes most vulnerable to diversion are the lowest cost volumes that provide the highest contribution to Postal Service institutional costs. [TR19003.]

The "cherry picking" that goes on when shared mailers convert all or part of their distribution from the mail to private delivery is discussed by other witnesses supporting the USPS proposed reduction of the pound rate. [SMC-T-2 at 7; NAA/SMC-T2-2.] Even the private delivery witnesses sponsored by AAPS and NAA admit that their saturation delivery programs do not attempt to cover an entire metropolitan area.<sup>5</sup>

4. The reduction of the ECR pound rate will produce increased pound rate volumes and revenues for the USPS. Under present rates, some shared mailers and free papers regard the pound rate as a barrier or cap to increased selling. Witness Bradpiece testified that only 2.5% of his Pennysaver's volumes exceeded the breakpoint and that they were "very careful to try and manage our weight so that we do not go over the pound rate." [TR18960.]

5. A reduction in the ECR pound rate will benefit catalog mailers, other ECR mailers, and advertisers. The USPS ECR pound rate proposal has been supported in this case by MOAA, DMA and the Association for Postal Commerce . The rebuttal testimony of Scott Harding

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<sup>5</sup>AAPS Witness White agreed that there were 400,000 households in the Oklahoma City market area but that their delivery network was only capable of delivering to 282,000 households. "There are some areas that are less desirable than others." [TR10036 and 10037.] NAA Witness Wilson acknowledged that the occupied household count for the Miami Herald's market area was 1,446,700 but that the entire combined circulation of its subscriber and nonsubscriber TMC was approximately 795,000. [TR19184 and 19187.]

for the Association for Postal Commerce is particularly telling on this subject. Harding, the Chairman and CEO of Newspaper Services of America, provides the large advertiser's perspective about the benefits of being able to choose between competitively priced media distribution services, whether in shared mail programs or in newspapers. Harding states, "We believe a reduced pound rate will give the retail industry a competitive choice. Retailers are in a highly competitive market and extremely cost conscious. Any action to reduce costs will give far reaching benefits to all consumers." [Postcom-RT-1 at 5 and 6.]

6. A lower pound rate will be beneficial to mailers, advertisers and consumers in rural areas. SMC Witness Merriman explains that all but 6 issues of his weekly paper are in the pound rate. His mailed shopper is the only weekly shared mail option for insert advertisers to reach farm and ranch households in the very rural, spread out areas, of his 5 state market. Because of the higher weight related rates advertisers must pay to have their inserts delivered by mail, they often cut the size or page count of inserts distributed in his paper. "As a result of this many of our advertisers do a different version of an insert ad for our mailed paper, that is shorter and lighter than they would do that same week, for circulation in papers delivered by private carriers in metropolitan areas. The high pound rate results in rural readers getting smaller and lighter flyers than their cousins in the cities, that provide less shopping information so vital to consumers in our rural market area." [SMC-T-2 at 8.]

**THE COMMISSION SHOULD REJECT THE PROPOSALS BY NAA AND AAPS TO INCREASE COST COVERAGES, AND IN TURN POSTAL RATES, FOR ECR SATURATION MAIL AND TO MAINTAIN OR INCREASE THE POUND RATE**

**When it comes right down to it, the Commission should reject the NAA and AAPS arguments on the grounds of "no harm, no foul."**

In this case, as in prior cases, NAA and AAPS work in tandem to urge the Commission to adopt the highest rates possible for ECR Standard mailers under the criterion of (b)(4) of the Postal

Reorganization Act, 39 USC § 3622 (b)(4), that requires the Commission to consider “the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters.” AAPS and NAA proceed to sing in harmony that the USPS proposals “would significantly harm” their members. But other than their own unsubstantiated assertions, there is no record evidence from these parties that the USPS’s present, or prior, proposals for ECR mail have had an adverse effect on their members.

The absence of any evidence of “effect” or “harm,” (which AISOP believes is a fatal defect of the positions taken by AAPS and NAA), is the same subject of NAA Witness Tye’s criticism of the USPS ECR saturation proposals. Witness Tye chastises the USPS for failing to submit evidence on the “effect” of its proposals on competition. He states, “This approach blatantly ignores one of the statutory rate making factors. Witness Moeller, whose testimony contains the pound rate proposal, acknowledged under cross-examination that he knew nothing about the ‘alternate delivery industry.’” [TR14695.] Witness Tye goes on to provide a complex comparison of ECR rates and cost coverages with those of First Class Single Piece mail from which he concludes that the Postal Service has a desire “to divert volume from private enterprise” and is “inappropriately targeting private competitors.” [TR14732 and 14733.]

If one cuts through all of the tangled economic webs Tye weaves, the result is that he must be hung with his own rope. Tye’s arguments have these fatal flaws:

1. It isn’t the job of the USPS to consider the “effect” of rate proposals on enterprises in the private sector, it is that of the Commission. There is ample evidence before this Commission, submitted by several associations of mailers, large and small advertisers, and individual mailers, about the competitive playing field for the delivery of advertising between ECR mail and distribution by private competitors. The record evidence shows that postal rates, and other

costs and requirements of using the USPS, make mail (and in particular heavier mail) significantly less competitive than the internal costs paid and prices charged by private enterprise.

2. Witness Tye, and the other witnesses produced by NAA and AAPS, has submitted no evidence of harm and no other evidence for this Commission to consider of the “effect” of past or current USPS rate proposals for ECR mail on their business. How can Witness Tye criticize Witness Moeller, a USPS witness, for not having knowledge about the “alternate delivery industry?” Witness Tye, who presumably had access to the cost and pricing data of his employer NAA, did not offer or even consider any of this information in his testimony. [TR14781; TR14868.] If NAA and its witness choose not to provide evidence on the “effects” of rate proposals on their members, their requests to the Commission should be given little weight. When asked to provide statistical or financial backup for his conclusions about the impact of the proposed rate increase for ECR on competitors, Tye’s response is “see the testimony of Mr. White for evidence of the impact of ECR rate changes on private delivery firms.” [TR14848.]

Isn’t it just a little bit insincere for NAA and Tye to ask this Commission to reject the USPS proposals for ECR mail because the Postal Service failed to consider “the effect” of their proposals on private mail users, when Tye and NAA (who unlike the USPS have access to this information) do not do it either? Tye admitted on cross examination that he did not have any evidence from newspaper sources of diversion into the mail [TR14895] and that he neither requested, nor received, data from the newspaper industry on their internal costs or prices. [TR14906.]

3. Even if Tye succeeds in causing the Commission to question the purity of USPS motives, the Postal Service’s motives should be irrelevant in the absence of any credible, record evidence that its ECR proposals will adversely effect or harm “enterprises in the private sector.”

Some of the additional problems with the story, or partial story, advanced by Witness Tye is his failure to mention, let alone address, the fact that the ECR Standard Mail proposals have the most beneficial rates for ECR, high density mail, the type of mail used by NAA members in their TMC programs. Under the Postal Service proposals, high density ECR mail entered at the DDU would receive a rate increase of less than 1%. Will this very minimal increase help newspapers compete with shared mailers? Tye does not bother to consider the “effect” of the ECR high density proposal on the newspapers’ competitive position versus saturation letter and flat mailers that will see increases of 5% to 10%. Likewise, Tye ignores the importance of cost-effective saturation mail to community and weekly newspapers, like those represented by the National Newspaper Association (NNA). A survey of NNA members shows that saturation mail is very important to their members. [TR18991.]

AISOP submits that the criterion of (b) (4) of the Act must be read in totality. The Commission is directed to consider “the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters.” The section requires a balancing of the interests of the general public and business mail users with those of competitive enterprises. It does not give competitive enterprises special standing to seek price protection from the Commission when they are competing with the Postal Service. Indeed, the abundant evidence in this case is that the USPS proposals for ECR mail will be beneficial to the general public, consumers, large and small advertisers, and mailers.<sup>6</sup> The Commission should not override the interests of these stake holders in the postal rate making process without convincing evidence from competitive enterprises that the USPS proposals will harm them.

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<sup>6</sup>Given the substantial record evidence that the least costly to deliver ECR mail volumes are price sensitive and are subject to diversion, the rates for ECR mail have a great impact on the Postal Service’s monopoly customers who will be saddled with higher rates if saturation mailers or newspaper TMCs using high density ECR switch to non-postal delivery. [SMC RT-2; VP/CW-T-1.]



The Commission should require credible, record evidence of actual or likely harm before it gives any weight to the proposals of competitive enterprises. Pot shots at the Postal Service, conspiracy theories, and the sky is falling complaints should not be enough.

**THERE IS NO RECORD EVIDENCE THAT THE USPS PROPOSALS  
WILL HURT THE ALTERNATE DELIVERY BUSINESS**

As discussed by NAA Witness Tye, one of the reasons the Commission rejected the USPS proposal for a 20% reduction in the ECR pound rate in 1997 was its concern that such a reduction might jeopardize the viability of small businesses, such as the alternate delivery services represented by AAPS. [PRC R97-1 Opinion at 403.] There is no such evidence, or reliable inference, that can be deduced from the record in this case.

What does the record tell us, or cause reasonable fact finders to conclude, about the alternate delivery business? This is what the record shows:

1. Two representatives of alternate delivery companies appeared before this Commission. Each company is owned by a large, daily newspaper company or chain and is operated as a consolidated division. The prices and programs of the alternate delivery company are set with the primary needs of the mother ship newspaper in mind.<sup>7</sup>

2. Most private delivery businesses exist, or are created, to provide regular delivery of a weekly product, like a newspaper TMC, shopper, or free paper. AAPS did not volunteer specific information about its 110 members, but acknowledged many are owned by

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<sup>7</sup>In the case of the Knight Ridder papers, advertisers cannot buy TMC or alternate delivery services without using the combined circulation of the newspaper and the alternate delivery company [TR19251.] In the case of Delivery Services of Oklahoma or DSO, the delivery company does offer saturation delivery services independent of its newspaper owner, but sets its initial weight threshold and prices so high that no lightweight advertiser or customer would choose DSO services over the TMC product and prices offered by the Daily Oklahoman. DSO saturation delivery of up to 5 ounces costs 10.8 cents or less. Discounts for volume and frequency will bring this rate down to 7.3 cents or less. [ADVO/AAPS-T1-12.]

newspapers or publishers of shopping guides. Representatives of the newspaper industry and free papers have described to the Commission how alternate delivery is considered by them as less a stand alone business than a means to deliver their proprietary paper, TMC or shopper at the lowest cost. [TR19245; TR18978.]

3. Although AAPS has complained bitterly in this case, and in prior cases, about the USPS's evil intentions when it comes to ECR rates, it appears the only adverse effect or harm private delivery companies can prove due to postal rates was the loss of the magazine delivery business that this industry was able to serve between 1992 and 1995. [TR19181; AAPS-T-1 at 13-16.] Both AAPS Witness White and NAA Witness Wilson agree that the greatest loss of alternate delivery volumes and AAPS membership attributable to postal rates was due to the postal reclassification of periodicals. Yet no where in this case, or in prior cases, have these associations urged the Commission to adopt higher rates for periodicals.

4. The private delivery business serves a very small part of the nation's households. Witness White estimated that only 2% to 3% of the households receive private delivery from AAPS members. [TR at 10035.] Witness Bradpiece has operated a mailed shopper for 4 years that goes to 1,300,000 homes in metropolitan and rural areas in two states. Yet he has never been approached by a private delivery provider offering its wares. [TR18930.]

5. Although the record contains a range of evidence about the costs paid by alternate delivery companies to have pieces delivered, some conclusions can be reached. Private carrier companies usually hire independent contractors to handle deliveries that are paid on a per piece basis. AAPS Witness White confirmed that its carriers are independent contractors that are paid 5 to 13 cents per piece for saturation deliveries. [USPS/AAPS/T1-17.] Witnesses Bradpiece and Merriman both provided evidence of their experience with private delivery where employees or independent contractors would be paid a rate of no more than 5.6 cents per piece to deliver a paper

plus a rate of between ½ cent to 1 cent per insert. The compensation paid these carriers for inserts covers both the task of manually inserting the piece into the paper and delivering it to the home [NAA/SMC-T2-3; TR18914.] Witness Bradpiece provided a cost comparison of the actual costs he was paying to deliver a free paper by private carrier with the costs he would pay under current or proposed postal rates and concluded that his current private delivery costs were less than 1/3 of the current or proposed postal rates. Witnesses Giuliano and Buckel provided evidence on the distribution costs of private carrier companies and testified that saturation pieces could be delivered at a cost of 12 cents a piece or less without regard to the weight of the piece. [TR19000; SMC-T-1 at 12.]<sup>8</sup> Dr. John Haldi supplies further evidence that the stand alone pro-rata cost of establishing a one or two day a week alternate delivery system for advertising mail appears to be equal to or less than the current costs of running the USPS. [VP/CW-RT-1 at 12-14.]

When the record is viewed as a whole, there is little evidence of an American alternate delivery industry made up of large and small businesses that compete with the Postal Service for the delivery of mail matter other than letters. If the alternate delivery companies that are operated as divisions of newspapers and free papers are eliminated from the count, it would appear there might

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<sup>8</sup>NAA Witness Wilson criticized the alternate delivery cost figures provided by SMC witnesses and testified that the Miami Herald's "fully loaded costs" for a 5 ounce piece were 19 cents. [TR19160.] There are several reasons why this number is not a reliable or credible statistic for the Commission. First, it is questionable that the Miami Herald would pay such a high cost for private delivery since it is greater than the postal rate the paper would need to pay for ECR, high density mail. Second, the cross-examination of Wilson shows this is not an "apples to apples" comparison. TMC deliveries have higher costs that would not be incurred with a full saturation delivery route. The carrier does not go to every house and thus has a longer route. The carrier must also pay attention to a delivery manifest that shows subscribers and non-subscribers and keep updated with subscriber changes. [TR19162-19167.] Wilson also added into his "fully loaded" cost computations costs that a mailer would need to incur above and beyond the payment of USPS postage rates such as producing the delivery manifest, transportation to the delivery unit, management costs of running the distribution business, payroll, accounts payable, accounts receivable, packaging the inserts, management of the facility and management of the quality control verification function. [TR19160, 19171-19174.]

be a handful of independent private delivery companies that serve a minuscule geographic portion of this nation. These are not businesses that are providing the general public and business mail users with a viable alternative to ECR saturation mail. Even if there are such independent, competitive enterprises out there, there is no evidence about them in this case. Instead, we have the unsubstantiated allegation by Witness White that the Postal Service proposal “would further damage alternate delivery’s ability to compete, not only against lack of access to the mailbox but with prices that could allow shared mail packages to arbitrarily price below our costs, forcing alternate delivery companies out of business.”<sup>9</sup> [AAPS-T-1 at 5.]

Witness White’s testimony suffers from the same fatal defect as Witness Tye. He criticizes the Postal Service for failing to consider the effect of its ECR proposals on competitors, but declines to advance any concrete evidence of harm or effect (other than the loss of the magazine delivery business). White’s only evidence of “effect” is, like Tye, to chastize the Postal Service and conclude “let’s face it, the Post Office just cannot escape from the fact that its every attempt to manipulate rates is yet another veiled effort to keep competitors from the private sector at bay.” White accuses the Postal Service of “deliberately pricing postal rates in order to drive our industry into the ground.” [AAPS-T-1 at 27.]

AAPS’s accusations are amply rebutted by USPS Witness O’Hara. There is no evidence that ECR mail has grown at the expense of the private delivery industry or that the Postal Service is bent on driving alternate delivery companies out of business. The postal rates proposed in this case are

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<sup>9</sup>There is ample evidence on the record to rebut White’s contention that the proposed USPS ECR rates would help saturation mailers price their shared mail packages (or inserts in those packages) below the costs or prices of private delivery. Even with the proposed rates, Witness Bradpiece testified that the proposed postal rates would still be approximately 1/3 of his costs for private delivery of a paper and inserts. [TR18913-18915] NAA Witness Wilson admitted on cross-examination that the prices currently being charged by the Miami Herald were below the postal costs a shared mailer would have to pay for a like piece added to a shared mail package at or above the breakpoint. [TR19242.]

based on costs not conspiracies. The product samples and bound printed matter handled by alternate delivery companies are subject to USPS proposed increases of over 15%. [USPS-RT-19 at 7.] The biggest growth category for ECR mail has been in the high density category, the category commonly used by newspaper TMC programs. From 1998 to 1999, high density non-letters grew 6.6% where ECR saturation flat volumes declined 2.4%. [USPS-RT-19 at 6.]

AAPS has produced no evidence from which this Commission can conclude that the USPS proposals for ECR mail will have an adverse effect on its industry. AAPS's requests before the Commission regarding ECR rates should be rejected.

**NAA, LIKE AAPS, POINTS TO CRITERION (B) (4) OF THE ACT AS ONE OF THE  
PRIMARY REASONS THE COMMISSION SHOULD CONSIDER ITS POSITION  
BUT ALSO FAILS TO SHOW HARM**

In lieu of presenting any evidence from the newspaper industry to show existing, or potential, harm that newspapers have suffered in the past or would suffer in the future from the USPS proposals, "NAA respectfully refers the Commission to the testimony of AAPS Witness John White [AAPS-T-1], which discusses at length the threat posed by the pound rate reductions to alternate delivery firms." [NAA Trial Brief at 8.] NAA's entire case to show "harm" or "effect" on competitive enterprises is to say "see the testimony of Mr. White for evidence of the impact of ECR rate changes on private delivery firms." [TR1848.] As discussed above, White has some evidence that the 1995 change in periodical rates hurts the alternate delivery industry. He has no other facts to offer about how the ECR proposals will effect the private delivery or newspaper industry.

What does the record in this case tell us about the impact of ECR rates on the newspaper industry?

1. The newspaper industry is as good at playing the shared mail game as any of its rivals. Newspapers in many communities have poor penetration or household coverage. The Knight Ridder paper in Miami reaches only 21% of all occupied households during the week and

27% on Sundays. [TR19165.] To make some advertisers happy, they have developed TMC programs to deliver advertising to non-subscriber homes. Knight Ridder considers the cost and convenience of mail advertising, together with the costs of private delivery, in determining whether to deliver its non-subscriber program by mail or private carrier. At present, in the Miami market, Knight Ridder finds it cost-effective to deliver its 375,000 non-subscriber weekly pieces by 150,000 by private carrier and 225, 000 by mail.

2. The Postal Service proposals for ECR mail should not change the current playing field for the newspaper industry and shared mailers. If anything, the ECR proposals are more favorable to newspapers using high density ECR mail to deliver their TMC programs than they are to their saturation mail rivals. Both newspapers and shared mailers will get the same benefit of a modest reduction in the pound rate for heavier mail. The basic rate for ECR high density mail is proposed to go up by the Postal Service by less than 1% if it is entered at the DDU. The comparable rate increases for saturation flats and letters range from 5.3% to over 10%. If, indeed, the Postal Service is aiming to “divert business” from the newspaper industry, it is doing a pretty poor job of it with this very favorable proposal for high density ECR newspaper TMCs.

3. The newspaper industry has enjoyed healthy operating margins and profits. [TR18912.] Witness Bradpiece points to an Inland Study Press Association study that showed newspaper operating profit margins of 31.56%. Witness Wilson testified that Knight Ridder’s operating margin was 19.3%. [TR19178.]

4. The evidence shows that newspapers are able to offer their medium to large customers blended rates that are below the incremental cost of postage alone that a shared mailer would pay for a piece above the breakpoint. [TR19248.]

5. The most objective evidence of the market share of advertising maintained by the newspaper industry is presented by Scott Harding of Newspaper Services of America.

Harding's testimony dispels Tye's assertion that there has been a "significant shift of advertising from newspapers to ECR mail over the last 5 years" and establishes that "over 90% of the print media we place is with newspapers." [Postcom-RT-1 at 2.] Harding, whose business experience includes negotiating with over 78,000 suppliers including newspapers, TMCs, ADVO, Pennysavers and others, states that "our experience has shown that the mix of distribution options has remained relatively stable." [Postcom-RT-1 at 5.] Harding confirms that advertisers using larger and heavier preprints often have no media choice other than distribution by newspapers and concludes that the USPS proposals for ECR saturation mail would help make the playing field more competitive.

The position advanced by NAA, and its individual witnesses in this case, is curiously inconsistent. On the one hand, Witness Tye and NAA berate the USPS ECR rate witnesses for failing to submit evidence on the "effect" of the proposals on "enterprises in the private sector engaged in the delivery of mail matter other than letters." Yet Witness Wilson maintains that "newspapers do not compete with the Postal Service." It appears that NAA and Wilson would have the Commission create a special newspaper criterion of the Postal Reorganization Act to help newspapers "maintain the profit margin that the markets demand we maintain." [TR19151.] It makes for an interesting rhetorical question to ask how the NAA can ask the PRC for special consideration under criterion (b)(4) of the Act if newspapers are not enterprises or competitors "in the private sector of the economy engaged in the delivery of mail matter other than letters." AISOP submits the key questions the Commission should consider are:

1. Has NAA submitted any credible record evidence of adverse effect or harm from the USPS proposals for ECR mail?
2. Assuming it has, (which AISOP asserts it has not), how does this "effect" balance against the effect of the rate proposals upon the general public and business mail users?

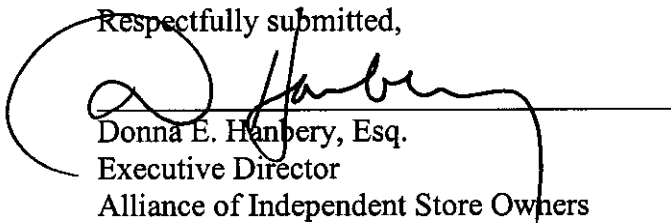
AISOP believes the answers are that NAA has produced no evidence that would lead the PRC to reject the USPS proposals for ECR mail.

## **CONCLUSION**

Saturation mailers, like shared mailers, shoppers, and coupon envelope companies provide an affordable, targeted advertising solution that helps small businesses get in business and stay in business. For a small business, like the independent family grocer competing against the buying power of regional stores and chains, the cost for mail advertising can be an essential, and critical, item of expense.

Shared mail businesses work in conjunction with the Postal Service to help their small business customers. AISOP asks that the Postal Rate Commission approve postal rates for saturation mail no higher than those proposed by the USPS. If there is any opportunity for a reduction in the saturation mail letter rate AISOP would urge the Commission to approve a rate below the 10% increase proposed by the USPS. AISOP asks the PRC to approve the USPS rate proposal for pound rated ECR mail.

Respectfully submitted,

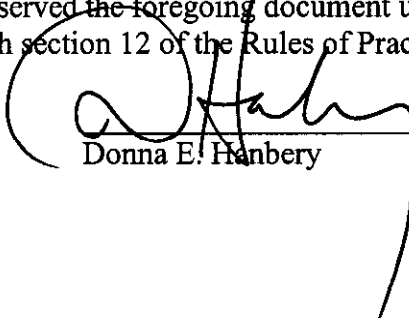


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CERTIFICATE OF SERVICE

I hereby certify that I have on this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



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Donna E. Hanbery

September 12, 2000